

AMENDED IN SENATE JUNE 28, 2010

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY MAY 12, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2396

Introduced by Assembly Member Solorio

February 19, 2010

An act to amend Section 11751.5 of the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Solorio. Workers' compensation insurance: rating organizations: statistical agent.

Existing law requires the Insurance Commissioner to designate a licensed rating organization, as defined, as his or her statistical agent to gather and compile workers' compensation insurers' loss and expense experience statistics, and all licensed rating organizations are required to report loss and expense experiences of their member workers' compensation insurers to the statistical agent. Subject to reasonable rules approved by the commissioner, the statistical agent is required to make available those compiled experience statistics to all licensed rating organizations. The statistical agent is authorized to make a reasonable charge to other ratings organizations for the expense incurred by it in combining, tabulating, and compiling the experience of all workers' compensation insurers.

~~This bill would require that all materials and documents prepared or used by the designated statistical agent for the purpose of developing pure premium rates, except as specified, be made available to the public and that copies of these materials and documents be made available to the public for inspection at no charge. The bill would provide that members of the public may purchase these ratemaking related materials and documents at actual cost, as specified.~~

This bill would require a statistical agent to conduct public meetings, as provided, would specify records of the statistical agent that are public, and would specify information prohibited from being considered a public record.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11751.5 of the Insurance Code is
2 amended to read:

3 11751.5. (a) The commissioner, after notice and hearing, may
4 promulgate reasonable rules and statistical plans, which may be
5 modified from time to time and which shall be used thereafter in
6 the recording and reporting by insurers of their loss and expense
7 experience in order that the experiences of all insurers may be
8 made available in such form and detail as may be necessary to aid
9 the commissioner in administering the provisions of Article 2
10 (commencing with Section 11730).

11 (b) The commissioner shall designate a rating organization
12 licensed under this article as his or her statistical agent to gather
13 and compile such experience statistics and all licensed rating
14 organizations shall report the experience of their members to such
15 designated rating organization. Subject to reasonable rules
16 approved by the commissioner, such designated rating organization
17 shall make such experience statistics, when compiled, available
18 to all licensed rating organizations and may make a reasonable
19 charge to other rating organizations for the expense incurred by it
20 in combining, tabulating and compiling the experience of all
21 workers' compensation insurers.

22 ~~(c) All materials and documents prepared or used by the~~
23 ~~designated statistical agent for the purpose of developing pure~~
24 ~~premium rates, other than proprietary materials and documents~~

1 ~~owned or licensed by third parties, shall be available to the public~~
2 ~~and copies of these materials and documents shall be made~~
3 ~~available to the public for inspection at no charge. Members of the~~
4 ~~public may purchase these ratemaking related materials and~~
5 ~~documents from the designated statistical agent at actual cost.~~

6 *(c) (1) The statistical agent shall conduct public meetings with*
7 *regard to all issues involving pure premium rates, classifications,*
8 *rating plans, rating systems, manual rules, and policy and*
9 *endorsement forms that are properly brought before it in any of*
10 *its committees. This shall apply to meetings conducted in person*
11 *and via teleconference. Attendance at telephonically conducted*
12 *meetings by members of the public shall be made available by the*
13 *publication by the organization in its meeting notices as set forth*
14 *below of a call-in number and passcode that members of the public*
15 *may use to participate in the meeting.*

16 *(2) As used in this section, "meeting" includes any congregation*
17 *of a majority of the members of any committee that handles the*
18 *issues set forth in paragraph (1), as applicable, at the same time*
19 *to hear, discuss, or deliberate upon any of those issues.*
20 *Notwithstanding the foregoing, a meeting shall not include any of*
21 *the following:*

22 *(A) Individual contacts or conversations between a member of*
23 *any committee and any other person, including, but not limited to,*
24 *any employee or official of the organization that does not violate*
25 *this subdivision.*

26 *(B) The attendance of a majority of the members of any*
27 *committee at an industry conference or other gathering organized*
28 *by a person or organization other than the statistical agent,*
29 *provided that a majority of the members do not discuss among*
30 *themselves any item that is within the responsibility of the statistical*
31 *agent as set forth in this article.*

32 *(C) The attendance of a majority of the members of any*
33 *committee at a purely social or ceremonial occasion, provided*
34 *that a majority of the members do not discuss among themselves*
35 *any item that is within the responsibility of the statistical agent as*
36 *set forth in this article.*

37 *(3) (A) A majority of the members of any committee of the*
38 *statistical agent shall not, outside a meeting authorized by this*
39 *article, use a series of communications of any kind, directly or*
40 *through intermediaries, to discuss, deliberate, or take action on*

1 any item of business that is within the responsibility of the
2 statistical agent as set forth in this article.

3 (B) Subparagraph (A) shall not be construed as preventing any
4 employee or officer of the statistical agent from engaging in
5 separate conversations or communications outside of a meeting
6 authorized by this article with members of any of its committees
7 in order to answer questions or provide information regarding
8 matters within the responsibility of the statistical agent, if that
9 person does not communicate to members of any of the committees
10 of the board of governors the comments or position of any other
11 member or members of the committees.

12 (d) All meetings of the statistical agent authorized under this
13 article shall comply with the protections and prohibitions contained
14 in Section 202 of the Americans with Disabilities Act of 1990 (42
15 U.S.C. Sec. 12132), and the federal rules and regulations adopted
16 in implementation of that act.

17 (e) (1) The statistical agent shall provide notice of its meetings
18 that are open and public pursuant to subdivision (c). This notice
19 and an agenda of items to be discussed shall be provided at least
20 10 days in advance of the meeting via the statistical agent's
21 Internet Web site. In addition, members of the public may request
22 notice by regular mail or by e-mail by making a written request
23 to the statistical agent for notice of meetings that are open and
24 public pursuant to subdivision (c).

25 (2) Notice may be waived or the 10-day period modified, with
26 respect to any particular meeting, by the statistical agent's
27 governing committee or board upon a request submitted to the
28 commissioner stating the need for a modified notice and exigent
29 circumstances requiring waiver of the notice requirement, at least
30 24 hours in advance of the meeting time set. The approval of the
31 commissioner shall be deemed granted if a written denial of the
32 request for waiver or modification of the notice period is not
33 received at least four hours prior to the commencement of the
34 meeting to be conducted under the modified notice.

35 (3) Notice of a meeting that does not meet the 10-day notice
36 requirement under this subdivision shall be posted on the statistical
37 agent's Internet Web site and provided by e-mail to members of
38 the public who have made a written request for e-mail notice to
39 the statistical agent of meetings that are open and public pursuant
40 to subdivision (c). A summary agenda shall be included in each

1 *such notice, but members of any committee may bring additional*
2 *items of business to any such meeting.*

3 *(f) At any meeting where notice is required pursuant to this*
4 *section, the statistical agent shall reserve time for public comment*
5 *on the issues addressed at the meeting.*

6 *(g) Nothing in this section shall be construed to prohibit the*
7 *committees of the statistical agent from holding a closed meeting*
8 *or a closed session of an open and public meeting to discuss any*
9 *of the following subjects:*

10 *(1) Financial, operational, or personnel information or matters*
11 *related to the statistical agent.*

12 *(2) Nonpublic financial, operational, or personnel information*
13 *or matters of member insurers of the statistical agent.*

14 *(3) Nonpublic information received from regulators regarding*
15 *the statistical agent or members of the statistical agent.*

16 *(4) Statutory interpretations and other advice received from*
17 *legal counsel to the statistical agent, whether in connection with*
18 *litigation or otherwise.*

19 *(5) Appointment, employment, evaluation of performance, or*
20 *dismissal of any employee or vendor that provides products and*
21 *services in connection with the operations of the statistical agent.*

22 *(6) Deliberations concerning the purchase, sale, exchange, or*
23 *lease of real or personal property, including investment property.*

24 *(7) Matters posing a threat of criminal or terrorist activity*
25 *against the statistical agent, its personnel, or its property.*

26 *(8) Legal, legislative, or regulatory matters of the statistical*
27 *agent, whether potential, pending, or actual, that are unrelated to*
28 *the issues in paragraph (1) of subdivision (c).*

29 *(9) Disputes and purported disputes with or involving members*
30 *of the statistical agent.*

31 *(10) Any other matters as permitted by order or regulation of*
32 *the commissioner.*

33 *(h) With respect to any closed meeting or session held as*
34 *permitted by subdivision (g), the statistical agent shall do both of*
35 *the following:*

36 *(1) Disclose, prior to the closed meeting or the closed session,*
37 *the general nature of the item or items to be discussed in the closed*
38 *session. The disclosure may take the form of a reference to the*
39 *item or items as they are listed by number or letter on the agenda.*

40 *In the closed session, the committee may consider only those*

1 *matters covered in its disclosure. After any closed session, the*
2 *committee shall reconvene in open session prior to adjournment*
3 *and shall make any reports, provide any documentation, or make*
4 *any other disclosures that may be required consistent with this*
5 *article. The announcements required to be made in open session*
6 *pursuant to this subdivision may be made at the location announced*
7 *in the agenda for the closed session, as long as the public is*
8 *allowed to be present at that location for the purpose of hearing*
9 *the announcement.*

10 *(2) Provide reports to the commissioner identifying the matters*
11 *covered in each such closed meeting or session and the provisions*
12 *of subdivision (g) pursuant to which the subject was discussed.*

13 *(i) Nothing in this section shall require or authorize the*
14 *disclosure of names or other information that would constitute an*
15 *invasion of privacy or otherwise unnecessarily divulge the*
16 *particular facts concerning the closed session or the disclosure of*
17 *which is prohibited by state or federal law.*

18 *(j) The commissioner or his or her designated representative*
19 *shall be permitted to attend all meetings of the statistical agent,*
20 *specifically including closed meetings and sessions. Any*
21 *information discussed in closed meetings or sessions shall be*
22 *treated by the commissioner and his or her designated*
23 *representatives as confidential pursuant to the provisions of Section*
24 *12919.*

25 *(k) Records of a statistical agent that shall be considered public*
26 *records and that shall be made available to the public for purchase*
27 *for the direct costs of duplication include, but are not limited to,*
28 *all of the following:*

29 *(1) Information releases, including bulletins, general notices,*
30 *all committee meeting agendas, and minutes, except for items*
31 *expressly excluded by statute, in which case the item shall be*
32 *generally identified, and the reason for the exclusion expressed in*
33 *writing.*

34 *(2) Information or materials provided to the department as part*
35 *of or in support of a rating filing.*

36 *(3) Actuarial assumptions and calculations made in the course*
37 *of ratemaking.*

38 *(4) Aggregate data, comprised of data from multiple carriers,*
39 *which is used in the ratemaking process.*

1 (5) Aggregate data provided to statistical agent members or
2 others, including classification experience data and aggregate
3 payroll data.

4 (6) Material made available free on the rating statistical agent's
5 Internet Web site that exists in other forms.

6 (7) Manuals, plans, and classification information, including
7 codes, materials, books, manuals, or pamphlets, that outline or
8 delineate the rules or regulations of the workers' compensation
9 system.

10 (8) Studies or reports created as a result of statute or request
11 of the department, the Legislature, or any other governmental
12 body, except to the extent that the department designates a
13 requested report or study as nonpublic.

14 (9) Materials used in classes or training for licensees of the
15 department or the public.

16 (l) All of the following information, if applicable based on the
17 facts of the particular case, in the possession of a statistical agent
18 shall not be considered a public record:

19 (1) Aggregate data from an individual insurer.

20 (2) Claims data relating to individual claims.

21 (3) Payroll data relating to an individual employer.

22 (4) Data relating to active investigations by the statistical agent
23 of a member or members initiated by the statistical agent, the
24 commissioner, or other law enforcement agency.